IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1526 OF 1998
IN
SUMMARY SUIT NO.3642 OF 1996

Janakalyan Sahakari Bank Ltd. .. Plaintiff
Versus
State Bank of India .. Defendant

Mr.Ashish Kamath with Nikhil Rajani i/b. V.Deshpande & Co. for plaintiff
Mr.Vishal Kanade i/b. Negandhi Shah & Himayatullah for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st August 2009.

P.C.:

1] In a summary suit, this Court had passed a decree on 9th September 1996. The decree was pronounced as the defendant was duly served with the writ of summons but had failed to take steps as are required to be taken under Order XXXVII of the C.P.C.

2] This is a motion moved to set aside this decree. The motion has been moved in the year 1998 but as is apparent from the Rozanama, under some erroneous assumption, the proceedings came to be

transmitted to the Debt Recovery Tribunal at Mumbai. Upon D.R.T. realising that the suit was filed under Order XXXVII of C.P.C., much prior to the establishment of the Tribunal and further the decree being pronounced by this Court, an application to set aside the said decree can only be maintainable before this Court. Therefore, the papers and proceedings were re-transmitted from D.R.T. to this Court and in all this precious and valuable time has been lost.

3] Be that as it may, the application to set aside this ex parte decree was placed before me and argued on the last occasion. Today the matter is placed for orders.

4] The request of defendants is that the suit claim is against a Nationalised bank. The bank was unaware of the matter being instituted and a decree being passed inasmuch as the suit transaction pertains to Fatehgunj branch at Baroda of defendants and no papers were available at Ahmedabad where the suit summons came to be served and received, in August 1996. The bank nationalised bank and administrative procedures had to be completed before the competent branch and authority could

take a decision in the matter. Since the papers were to be required to be placed before the branch at Baroda no decision could be taken to contest the proceedings and even otherwise that is the reason for the matter being not contested.

5] In para 3 of the affidavit in support, it is stated that there is a good, valid and bonafide defence on merits. The summary suit is based on an alleged letter of lien dated 26th June 1993. This letter at the highest created an obligation on the defendants to remit the funds which have been collected by way of allotment money after the date of the said letter. The defendants have already remitted Rs.13.30 lakhs. The letter does not cast any obligation to make payment of loan amount allegedly granted by the plaintiffs to Gujrat Dehyd Foods Ltd. The letter by no stretch of imagination could be construed as any guarantee. In these circumstances, this Court should give opportunity to the defendants to contest the suit claim on merits on such terms and conditions as this Court deems fit and proper.

6] The learned Counsel for the plaintiffs has refuted the above

position and has pointed out that the obligation in the letter is absolute. The communication/ document Exh.A is stamped by the defendants and signed by its Chief Manager. It is stated that the Chief Manager is the appropriate and competent authority to sign any letter. Further, the certificate at Annexure B would demonstrate that Rs.77 lakhs have been collected in the allotment money account. In such circumstances, the liability is unconditional and absolute. The decree has been rightly passed and the defence cannot be said to be valid in law.

7] In my view, having regard to the peculiar facts and circumstances and the defendants urging that it wishes to place on record its version with regard to the contents of both Exh.A and B to the plaint so also it agreeing to comply with all the terms and conditions imposed by this Court, I deem it appropriate to set aside the ex parte decree in the instant suit. More so, because the notice of motion has been moved in the year 1998 and has been pending in this Court for all these years. Even, execution of the decree could not be done on that count. The papers were transmitted to D.R.T. and, therefore, even the plaintiff was not in a position to enjoy the fruits of ex parte decree.

8] In view of the aforesaid and when special reasons have been set out so also the requirements of Order XXXVII Rule 4(vi) having been satisfied the decree in question is set aside on the condition that the defendants deposit in this Court a sum of Rs.30 lakhs within four weeks from today and pay costs of the motion quantified at Rs.5000/- to the plaintiffs.

9] The defendant bank may take such steps as are permissible in law to fix the responsibility on those who were/ are concerned with the suit transaction/ matter and seek recovery of the sum which has been directed to be paid as costs. The costs also be paid within the aforesaid period.

10] If compliance is made with the aforesaid, motion is made absolute in terms of prayer clause (a). Needless to state that if compliance is not reported with the aforesaid conditions, the decree stands and the motion will be dismissed without any reference to Court, thereafter.

(S.C.DHARMADHIKARI, J)